

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No 381 of 1997

in

COMPANY PETITION No 205 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

MANEKLAL RAYCHAND SHAH,

Versus

O.L. OF G.S.T.C.

Appearance:

MR AR SHAIKH for Petitioner
MR RM DESAI for Respondent No. 1
NOTICE SERVED for Respondent No. 3
MR PK SHUKLA Ld. AGP for Respondent No. 4

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 22/11/2000

ORAL JUDGEMENT

This application is filed by the applicant, who claims to be the original tenant of the properties bearing Municipal Census No. 291/2 of erstwhile Tarun Commercial Mills Limited, taken over by the Gujarat State Textile Corporation Limited (In Liquidation) with a prayer to hand over the vacant and peaceful possession of the property by directing the Official Liquidator to remove the seal applied thereon.

It is the case of the applicant that as a 'Karta' of Maneklal Raychand Shah, HUF, had taken on rent a Shop from a Textile Mill which was predecessor in title of Tarun Commercial Mills Limited at monthly rent of Rs. 15/-. It is the case of the applicant that he has paid rent from time to time to the said owner and thereafter to Tarun Commercial Mills Limited. The said Undertaking was nationalised and the Gujarat State Textile Corporation Limited took over the whole undertaking. As a result of which, the shop which was owned by the Tarun Commercial Mills Limited came to be owned by Gujarat State Textile Corporation Ltd. and the applicant has in fact paid rent to GSTC also from time to time. It appears that GSTC Ltd. became a sick company and a reference was made to the Board of Industrial and Financial Reconstruction (BIFR) under the provisions of the Sick Companies (Special Provisions) Act. It further appears that the BIFR opined that the GSTC Limited deserves to be wound up. Accordingly, this Court has passed an order of winding up of GSTC Limited, and consequently, the Official Liquidator has taken over the possession of all the assets and undertakings of GSTC Limited. In the process of taking over of the said Undertaking the Official Liquidator sealed the shop which was in possession of the applicant and, therefore, the present application is filed.

The Official Liquidator has submitted a report on 26.8.1998 pursuant to the order dated 22.7.1998. It is stated therein that he had gone to the premises in question for the purpose of spot inspection with the company of Managing Director of G.I.D.C. (Agent of the Official Liquidator) and the ex-Director Shri I.A. Vohra. They have observed that the premises in question collapsed during the rainy season, alongwith other adjacent shops. On making enquiry they found out that the shop in question collapsed on 6.6.1998. They have observed that there is no roof or walls and the entire premises has collapsed and only some debris and about 9 gurdles (iron rods) in rusted conditions are lying at the site of the 3 collapsed shops. In view of these circumstances, it was observed that there was no question of opening the seal of the Official Liquidator and handing over the possession of the premises to the applicant after inspection.

Regarding the merits of the case, the Official Liquidator has requested the Ex-Director of the G.S.T.C. Ltd. (In Liquidation)to say in the matter. Accordingly, Shri I.A. Vohra, Ex-Director of the Company (In Liquidation) by his letter dated 3.10.1997 informed

the Official Liquidator that the Tarun Commercial Mills is one of the units of the G.S.T.C. Ltd. The plant and machinery and structure have already been sold and the same was demolished and only land remains to be sold. There are some tenant on the western side of the Mills. It is further stated in the said letter that the present applicant is one of the tenant and is in default of payment of rent from October, 1979 till date.

In view of the said fact, the Official Liquidator has submitted that at the first instance the applicant may be directed to pay the arrears of rent of the premises in question to the Official Liquidator for the period from October, 1979 to till date, and since the premises in question is now lying collapsed there is no purpose in allowing the applicant to continue as tenant.

In view of this factual position, it is clear that the applicant is a tenant of the shop, situated on the western side of the Mills, however, he is in default of payment of rent from October, 1979 till the date. The receipt produced by the applicant issued by the Tarun Commercial Mills Limited are prior to 1979. Thereafter no receipts of the payment of rent is produced. Mr. Shaikh after inviting my attention to the payment of Rs. 725/ alleged to have been made to GSTC by Demand Draft on 1.11.1991 contended that the said transaction would go to show that the applicant has paid the amount of rent up to 1991. In absence of any receipt issued by the GSTC Limited, it is not possible for me to hold that the said payment was towards the rent up to 1991. In substance, there is no evidence regarding payment of rent from 1979 up to 6.6.1998 when the premises collapsed. In view of this, it can safely be concluded that the applicant is a tenant in arrears. Mr. Shaikh submitted that the applicant is prepared to pay all the arrears of rent of the premises in question provided the possession of the suit premises is restored to him. From the report submitted by the Official Liquidator, it is clear that the suit shop is collapsed as back as on 6.6.1998. There is no roof or walls except some debris, and no structure is there and, therefore, there is no question of handing over the possession of the premises to the applicant. Mr. Shaikh invited my attention to the decision of this Court in the case of Tribhovandas Purshottamdas Thakkar vs. Chimanlal Keshavlal Rana & Ors., reported in 12 GLR, p. 556. In the said decision, this Court has laid down that the doctrine of frustration does not ordinarily apply to leases even after premises are destroyed. The relationship of landlord and tenant continue to exist and, therefore, tenant entitled to restoration of

status-quo. That was the case, wherein the landlord demolished the part of the premises belonged to the tenant in his absence and constructed a building. In substance, the landlord took advantage of absence of the tenant and took forcible possession for which more criminal cases were filed between the parties. That is not the case here. The premises in question is demolished because of heavy rain, an act of God. In my opinion, the doctrine of frustration will certainly apply to the facts of the case. Sec. 108 Cluase (e) of the Transfer of Property Act lends support to my view, which provides as under:

"If by fire, tempest or flood, or violence of an army or of a mob, or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void."

The aforesaid provisions makes it clear that where, amongst others, the demised premises have been wholly destroyed by an act of God or by an act of State or by any other factor or cause beyond human control the lease between the parties subsists unless the lessee chooses to avoid it. If the circumstances beyond human control such as those specified in clause-(e) of sec. 108 the demised premises are destroyed and yet if the lessee chooses not to avoid the lease cannot be avoided. In the facts and circumstances of the case, the demised premises which were in possession of the applicant is destroyed by any reason beyond human control and, therefore, the lease or the relationship of landlord and tenant between the applicant and the company came to an end. In view of this finding recorded by me, I am of the view that the decision cited by Mr. Shaikh in the case of Tribhovandas Purshottamdas Thakkar (supra) is not applicable to the facts of the case. As observed earlier, that was a case the landlord demolished the whole premises which was in possession of the tenant and reconstructed the entire building new in absence of the tenant without determining his tenancy and without recovering possession from him in the manner provided by law and thus, took law in his own hands and unilaterally destroyed tenant's right to immovable property rendering the tenant helpless. The present case is distinct from the facts of the said case. In view of what is discussed above, I see no merits in the present application.

The application stands rejected. There shall be

no order as to costs.

(K. R. VYAS, J.)
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